LPG Urban & Regional Planners, Inc.

CHANGES TO THE GROWTH MANAGEMENT PLANS AND REQUIREMENTS – 2011

Growth Management Background

All of Florida's 67 counties and 347 municipalities have Comprehensive Plans addressing future land use, housing, transportation, water supply, drainage, potable water, natural groundwater recharge, coastal management, conversation, recreation, and open space, intergovernmental coordination, capital improvements, and public schools. The Department of Community Affairs (DCA) administered all this, but is being cut from 60 planners to 32, and becoming instead the Department of Economic Planning.

Instead of extensive comprehensive plan amendment review by the state and regional entities on many issues, this new law limits them to adverse impacts on state resources and facilities. Local governments used to be able to amend their comprehensive plan only twice a year, but it is not limited any more.

I. Major Changes to Comprehensive Plan Requirements

Concurrency: Transportation, Schools, and Recreation repealed. This allows cities to choose to keep concurrency or repeal, if repealed this is not subject to state review.

Options: The new law provides alternatives should a local government elect to keep concurrency for Transportation and Schools; however, it does not outline any guidance for recreation. Limited guidance on Transportation if cities elect to repeal concurrency, experts have provided the following options:

1) City can repeal concurrency for transportation and adjust in the future the LOS on the roadways if roadways become an issue.
2) The roadways are the responsibility of FDOT or County or MPO. The LOS Concurrency program and the roadways are their responsibility. This is a very controversial issue and I have attended several seminars and the final interpretation is yet to come.

EAR Submittals: The requirement on the amount of material and information submitted to DCA for EAR evaluation and review have been reduced to a "letter" that outlines only the amendments necessary to reflect changes in state requirements since the last update.

The total review of City's comprehensive plan policies meeting their goals, objectives, etc. and the community opinions that the City was complying with it's plan does not apply any more. Identifying new major goals and need is not needed to be submitted to the State.

At a recent seminar, several cities expressed their opinion that they would still use the old methodology to create the "letter" – they felt this was "good planning".

EAR based amendments are still required within one (1) year and are processed under the old process – not expedited.

Small Scale Amendments: Several changes in the law deleted the following:

1) Removed density cap, was 10 units per acre maximum
2) Removed same ownership restriction on parcels over 12-month period within 200 feet
3) Removed restriction dealing with text amendment if related to small scale
4) Increased from 10 to 20 acres if in "rural areas of critical economic concern" – None of Lake or Sumter County qualifies.
5) Adoption of small scale amendment is local issue only.

II. Elements

Land Use Element: Two areas were amended, one for the better – need, the other in my opinion not so good – sprawl.

1) Need – The criteria has shifted from maximum to minimum land amount needed based on BEBR medium projections for at least 10 year period. Several land use attorneys feel that this allows the market to adjust the maximum projections and the local governments to pick the planning period.
2) Sprawl – The new law repealed 9J-5; however, incorporated the 13 indicators of urban sprawl and adds 8 new criteria to the total of which a city must meet 4 of the 8 plus the original 13 to justify not creating urban sprawl. I believe this test just got tougher.
3) Energy efficiency and reduction of greenhouse emissions are deleted in all the elements.
4) Mixed use, walkable connected communities supporting multi-modal transportation is still in the law.

Capital Improvement Schedule: This law repealed the annual comprehensive plan amendment requirement for updating. It also repealed financial feasibility being required, now City's must adopt by ordinance annually a 5 year schedule identifying by priorities funded and unfunded the City's scheduled improvements. These should include the County and MPO.

Schools: Makes school concurrency optional as stated earlier.

1) Removes requirement for public school facilities element
2) Removes many of the requirements related to school concurrency and interlocal agreement with School Boards
3) Removes prohibition on adopting plan amendments for not addressing school siting requirements
4) Permits portables to be counted as supply for classrooms; currency counting limited to 3 years and requires District wide to be counted toward concurrency, if option is elected.
5) Removes requirement for collocation of parks and schools, up to local government.

6) Places the entire process within the "Interlocal Agreement" methodology – which has already been adopted.

Transportation: Requirements for optional transportation concurrency are added to the statute, including the requirement to allow "pay-and-go" for transportation concurrency using proportionate share mitigation.

1) The methodology for proportionate share mitigation and its application are defined to ensure that development is not required to pay for existing deficiencies or more than its proportionate share, to address issues regarding mitigation for cumulative impacts, and to ensure dollar-for-dollar credit for impacts and other mitigation paid.
2) Outlined in the law are the minimum requirements for the element while still requiring LOS designations, street classification, system maps, multi-modal policies, and since all Cities are within an MPO there are minimum requirements dealing with public transportation, bicycles, pedestrian, aviation (if applicable) and deficiencies that need to be addressed.

Public Facilities: Needs analysis and evaluate maximizing existing facilities, increasing capacity to meet future need, discourage urban sprawl, conserve potable water, and identify future alternative water supply needs.

Housing: Renamed Affordable Housing and restated methodology for computing what constitutes affordable housing and how communities address meeting the need for keeping up with the inventory of required housing for this market.

III. Comprehensive Plan Process:

1) The "expedited state review process" will be used for most comprehensive plan amendments throughout the state. The expedited process required that proposed plan amendment be transmitted to the reviewing agencies, who may provide comments to the local government within 30 days. After adoption, there is another 30 day period within which the state or third-parties can file challenges. No Objections, Recommendations, and Comments (ORC) Report or Notice of Intent is issued. The expedited process reduces the minimum state review period by approximately two months.
2) Certain amendments must use the "state coordinated review process", which is similar to the plan review process currently in place. It is to be used only for plan amendments that:

   - Are in an area of critical state concern
   - Propose a rural land stewardship area or sector plan
   - Update a comprehensive plan based on an evaluation and appraisal report
   - Adopt a new plan for a newly incorporated municipality

3) State agency comments on plan amendments are limited to important state resources and facilities that will be adversely impacted by the amendment. The bill defines what subjects each agency may address. Local government can challenge

whether the state comment is based on an important state resource or facility. Comments by regional planning councils and by other local governments are also limited under the bill.

4) The twice-per-year limitation on large-scale plan amendments is repealed. This provides local government flexibility in the processing of amendments and could thereby reduce the time needed to obtain approvals.

5) Local governments must adopt plan amendments (except those related to DRIs) within 180 days of receiving agency comments or the amendment is deemed withdrawn. The deadline may be extended within concurrence from affected parties. While there has been a deadline for adoption of plan amendments (in most cases 60 days after receiving the DCA Objections, Recommendations, and Comments Reports), there has been no penalty for going beyond the deadline and many adoption hearings have been delayed considerably, sometimes for years.

The interpretation of this new law after attending two seminars, calling Tallahassee, and speaking with several land use attorneys is fluid. The legislature is already working on a glitch bill to "fix" issues which have been raised because of the lack of clarity in several areas.